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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 FURNITURE ROYAL, INC.,

8 Plaintiff(s),

9 v.

10 SCHNADIG INTERNATIONAL CORP,  
11 et al.,

12 Defendant(s).

Case No. 2:18-CV-318 JCM (CWH)

ORDER

13  
14 Presently before the court is defendants Schnadig International Corporation d/b/a  
15 Caracole's ("Schnadig") motion to dismiss. (ECF No. 9). Plaintiff Furniture Royal, Inc.  
16 ("Furniture Royal") filed a response (ECF No. 25), to which Schnadig replied (ECF No. 26).

17 Also before the court is defendant Wayfair, Inc.'s ("Wayfair") motion to dismiss. (ECF  
18 No. 13). Furniture Royal filed a response. (ECF No. 23). Wayfair did not file a reply and the  
19 time to do so has passed.

20 Also before the court is Wayfair and Schnadig's (collectively "defendants") motion for  
21 sanctions. (ECF Nos. 11, 22). Furniture Royal filed a response (ECF No. 21), to which Wayfair  
22 replied (ECF No. 24).

23 **I. Facts**

24 Furniture Royal has brought forth this antitrust action challenging Schnadig's practice of  
25 selling its furniture online at discount prices. (ECF No. 4). In its complaint, Furniture Royal  
26 alleges the following facts:

27 Schnadig manufactures and markets high end furniture across the United States. *Id.*  
28 Furniture Royal is a brick and mortar retailer that has been selling Schnadig's furniture since

1 March 2010. *Id.* Throughout these dealings, Schnadig assured Furniture Royal that its furniture  
2 prices were fixed. *Id.*

3 In 2016, Schnadig entered into an agreement with Wayfair to sell its furniture directly to  
4 consumers on wayfair.com. *Id.* In September 2017, Wayfair launched a subsidiary website,  
5 perigold.com, which is a second online platform that Schnadig uses to sell furniture. *Id.*  
6 Although consumers use these websites to purchase furniture, Wayfair does not maintain any  
7 tangible inventory. *Id.* Instead, Schnadig sends its products directly to the consumers, which  
8 renders the websites as advertising platforms. *Id.*

9 Schnadig sold and continues to sell its furniture on wayfair.com and perigold.com at  
10 below retail prices—in some cases up to 40% off MSRP. *Id.* Because Furniture Royal cannot  
11 compete with these online prices, it has become an “Exhibit Room” where consumers come to  
12 see the products and then purchase the furniture directly from Schnadig on wayfair.com and  
13 perigold.com. *Id.*

14 On February 26, 2018, Furniture Royal filed the underlying complaint, alleging eight  
15 causes of action: (1) price discrimination in violation of the Robinson–Patman Act, 15 U.S.C. §  
16 13, against defendants; (2) civil conspiracy against defendants; (3) violation of section 1 of the  
17 Sherman Act, 15 U.S.C. § 1, against defendants; (4) fraudulent misrepresentation against  
18 defendants; (5) price discrimination in violation of the Robison–Patman Act; (6) violation of the  
19 Nevada Unfair Trade Practices Act (“NUTPA”), NRS 598A.060, against defendants; (7) tortious  
20 interference with prospective economic advantage against defendants; and (8) breach of contract  
21 against Schnadig. (ECF No. 4).

22 Now, defendants move to dismiss Furniture Royal’s complaint for failure to state a claim.  
23 (ECF Nos. 9, 13). Defendants also move for sanctions pursuant to Federal Rule of Civil  
24 Procedure 11(b). (ECF Nos. 11, 22).

## 25 **II. Legal Standard**

### 26 *a. Failure to state a claim*

27 A court may dismiss a complaint for “failure to state a claim upon which relief can be  
28 granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and plain

1 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*  
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
3 factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of  
4 the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation  
5 omitted).

6 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550  
7 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual  
8 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. 662, 678 (citation  
9 omitted).

10 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply  
11 when considering motions to dismiss. First, the court must accept as true all well-pled factual  
12 allegations in the complaint; however, legal conclusions are not entitled to the assumption of  
13 truth. *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by  
14 conclusory statements, do not suffice. *Id.* at 678.

15 Second, the court must consider whether the factual allegations in the complaint allege a  
16 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint  
17 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for  
18 the alleged misconduct. *Id.* at 678.

19 Where the complaint does not permit the court to infer more than the mere possibility of  
20 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.”  
21 *Id.* (internal quotation marks omitted). When the allegations in a complaint have not crossed the  
22 line from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at  
23 570.

24 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d  
25 1202, 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

26 First, to be entitled to the presumption of truth, allegations in a complaint or  
27 counterclaim may not simply recite the elements of a cause of action, but must  
28 contain sufficient allegations of underlying facts to give fair notice and to enable  
the opposing party to defend itself effectively. Second, the factual allegations that  
are taken as true must plausibly suggest an entitlement to relief, such that it is not

1 unfair to require the opposing party to be subjected to the expense of discovery  
2 and continued litigation.

3 *Id.*

4 *b. Sanctions*

5 “Rule 11 is an extraordinary remedy, one to be exercised with extreme caution.” *In re*  
6 *Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 437 (9th Cir. 1996) (quoting *Operating Eng’rs*  
7 *Pension Trust v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir. 1988)). The purpose of Rule 11 is to  
8 deter baseless filings and litigation abuses. *See Smith & Green Corp. v. Trs. of Constr. Indus. &*  
9 *Laborers Health & Welfare Tr.*, 244 F. Supp. 2d 1098, 1103 (D. Nev. 2003). Further, Rule 11  
10 addresses two separate problems: “first, the problem of frivolous filings; and second, the  
11 problem of misusing judicial procedures as a weapon for personal or economic harassment.”  
12 *Aetna Life Ins. Co. v. Alla Med. Servs., Inc.*, 855 F.2d 1470, 1475 (9th Cir. 1988).

13 “An attorney is subject to Rule 11 sanctions, among other reasons, when he presents to  
14 the court ‘claims, defenses, and other legal contentions . . . [not] warranted by existing law or by  
15 a nonfrivolous argument for the extension, modification, or reversal of existing law or the  
16 establishment of new law[.]’” *Holgate v. Baldwin*, 425 F.3d 671, 675–76 (9th Cir. 2005)  
17 (quoting Fed. R. Civ. P. 11(b)(2)).

18 “A court considering a motion pursuant to Rule 11 must do two things: (1) decide  
19 whether a Rule 11 violation has occurred, and (2) decide whether to impose sanctions.”  
20 *Chambers v. Nasco, Inc.*, 501 U.S. 32, 35 (1991); *Avendano v. Sec. Consultants Grp.*, 302 F.R.D.  
21 588, 591 (D. Nev. 2014).

22 Where, as here, the complaint is the primary focus of Rule 11 proceedings, a  
23 district court must conduct a two-prong inquiry to determine (1) whether the  
24 complaint is legally or factually “baseless” from an objective perspective, and (2)  
25 if the attorney has conducted “a reasonable and competent inquiry” before signing  
26 and filing it.

27 *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002) (quoting *Buster v. Greisen*,  
28 104 F.3d 1186, 1190 (9th Cir. 1997)).

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1           **III. Discussion**

2           Before the court are several motions. First, the court will grant in part and deny in part  
3 defendants’ motions to dismiss. Second, the court will deny defendants’ motion for sanctions  
4 pursuant to Rule 11(b).

5           *a. Failure to state a claim*

6           Defendants move to dismiss all of Furniture Royal’s causes of action. The court hereby  
7 addresses each cause of action in turn.

8           *i. Price discrimination in violation of the Robinson–Patman Act*

9           “[T]hree categories of competitive injury may give rise to a Robinson–Patman Act claim:  
10 primary line, secondary line, and tertiary line.” *Volvo Trucks North America, Inc. v. Reeder-*  
11 *Simco GMC, Inc.*, 546 U.S. 164, 176 (2006). “Primary-line cases entail conduct—most  
12 conspicuously, predatory pricing—that injures competition at the level of the discriminating  
13 seller and its direct competitors.” *Id.* Secondary-line cases involve injury to the competition  
14 between the seller’s customers, which are typically referred to as “favored” or “disfavored”  
15 purchasers. *Id.* Tertiary-line cases involve injury to the competition between the purchasers’  
16 costumers. *Id.*

17           Furniture Royal has failed to state a claim under any of these categories. According to  
18 the complaint, Schnadig engaged in discriminatory pricing between Furniture Royal, which is a  
19 retailer, and end-use consumers. (ECF No. 4). However, the Robinson–Patman Act is  
20 inapplicable to price discrimination between retailers and ultimate purchasers because retailers  
21 are not in competition with end-use consumers. *O’Byrne v. Cheker Oil Co.*, 727 F.2d 159, 164  
22 (7th Cir. 1984) (citing *Falls City Industries, Inc. v. Vanco Beverage Inc.*, 460 U.S. 428, 433  
23 (1983); see *Volvo Trucks*, 546 U.S. at 176 (holding that the Robinson–Patman act prohibits only  
24 price discrimination that threatens to injure competition). Therefore, the court will dismiss  
25 without prejudice Furniture Royal’s first and fifth causes of action for price discrimination in  
26 violation of the Robinson–Patman Act.

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1                   ii. *Violation of section 1 the Sherman Act*

2                   To state a valid claim under the Sherman Act, a plaintiff must allege that the defendant  
3 has market power within a relevant market. *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d  
4 1038, 1044 (9th Cir. 2008). A “relevant market” has two dimensions: the “relevant geographic  
5 market” and the “relevant product market.” *Brown Shoe v. United States*, 370 U.S. 294, 325  
6 (1962).

7                   Although Furniture Royal has alleged that the relevant geographic market is the United  
8 States and the relevant product market is the furniture industry, the complaint does not provide  
9 any details regarding Schnadig’s power to cause anticompetitive effects in the relevant market.  
10 (ECF No. 4). Accordingly, the court will dismiss without prejudice Furniture Royal’s third  
11 cause of action for violation of section 1 of the Sherman Act.

12                   iii. *Civil conspiracy*

13                   To state a claim for civil conspiracy a plaintiff must allege that: (1) two or more  
14 defendants acted in concert with the intent to accomplish an unlawful objective for the purpose  
15 of harming another, and (2) damage resulted from the concerted acts. *GES, Inc. v. Corbitt*, 21  
16 P.3d 11, 15 (Nev. 2001); *see also Steele v. EMC Mortg. Corp.*, No. 59490, 2013 WL 5423081, at  
17 \*1 (Nev. Sept. 20, 2013).

18                   Furniture Royal alleges that the defendants engaged in concerted action with the intention  
19 to undercut Furniture Royal’s business through various unlawful anticompetitive practices.  
20 (ECF No. 4). The complaint does not identify the specific unlawful anticompetitive practices  
21 that Furniture Royal’s civil conspiracy claim relies on, other than incorporating the allegations in  
22 support of its claims for violation of the Sherman Act and the Robinson–Patman act. *Id.*  
23 However, because Furniture Royal has failed to adequately plead those respective claims,  
24 Furniture Royal has likewise failed to plausibly plead that defendants conspired to effectuate  
25 unlawful objectives. Accordingly, the court will dismiss without prejudice Furniture Royal’s  
26 claim for civil conspiracy.

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1                   v. *Fraudulent misrepresentation*

2            “In alleging fraud or mistake, a party must state with particularity the circumstances  
3 constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s  
4 mind may be alleged generally.” Fed. R. Civ. P. 9(b). Under Rule 9(b), a plaintiff must allege  
5 “the who, what, when, where, and how of the misconduct charged.” *Vess v. Ciba-Geigy Corp.*  
6 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). The allegations must be specific enough to give  
7 defendants notice of the misconduct and why it was false or misleading. *Id.*

8           Furniture Royal primarily makes two allegations in support of its claim for fraudulent  
9 misrepresentation: (1) that Schnadig made “assurances that its prices were fixed” and (2) that  
10 Furniture Royal “inquired whether there was special pricing and [d]efendants denied such  
11 actions.” (ECF No. 4). Because these bare-bones allegations fail to provide the “the who, what,  
12 when, where, and how of the misconduct charged,” the court will dismiss without prejudice  
13 Schnadig’s claim for fraudulent misrepresentation. *Vess*, 317 F.3d at 1106.

14                   v. *Violation of NUTPA*

15           The NUTPA “tracks the provisions of the Sherman Act” and “adopts by reference the  
16 case law applicable to the federal antitrust laws[.]” *See Boulware v. Nev. Dep’t of Human Res.*,  
17 960 F.2d 793, 800 (9th Cir. 1992); Nev. Rev. Stat. § 598A.050. Therefore, because the analysis  
18 under the NUTPA is the same as the Sherman Act, the court will dismiss Furniture Royal’s  
19 NUTPA claim on the same grounds that it will dismiss Furniture Royal’s claim for violation of  
20 section 1 of the Sherman Act.

21                   vi. *Tortious interference with prospective economic advantage*

22           To state a claim for tortious interference with prospective economic advantage, a plaintiff  
23 must allege “(1) a prospective contractual relationship between the plaintiff and a third party; (2)  
24 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by  
25 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5)  
26 actual harm to the plaintiff as a result of the defendant’s conduct.” *Consol. Generator-Nev., Inc.*  
27 *v. Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251, 1255 (1998) (per curiam).

1 Here, Furniture Royal has not alleged any details pertaining to prospective contractual  
2 relationships other than alleging that potential costumers used its store as an “Exhibit Room.”  
3 See (ECF No. 4). Accordingly, the court will dismiss this claim without prejudice.

4 *vii. Breach of contract*

5 To state a claim for breach of contract, a plaintiff must allege: (1) the existence of a valid  
6 contract; (2) that plaintiff performed or was excused from performance; (3) that the defendant  
7 breached the contract; and (4) that the plaintiff sustained damages. *Calloway v. City of Reno*,  
8 993 P.2d 1259, 1263 (Nev. 2001); see also *Sierra Dev. Co. v Chartwell Advisory Group, Ltd.*,  
9 223 F. Supp. 3d 1098, 1103 (D. Nev. 2016).

10 Furniture Royal alleges that it entered into a dealer agreement with Schnadig that  
11 provided, through its course of dealing, that Schandig would not compete against Furniture  
12 Royal. (ECF No. 4). Schandig allegedly breached this promise when it began to sell furniture  
13 directly to consumers. *Id.* Furniture Royal has also pleaded that Schnadig’s actions caused  
14 several injuries, including loss of profits. *Id.* These allegations are sufficient to plausibly plead  
15 breach of contract. Therefore, the court will deny defendants’ motions to dismiss as to this  
16 claim.

17 *b. Sanctions*

18 Defendants argue that the court should award sanctions because Furniture Royal’s  
19 counsel failed to make a reasonable inquiry into the nature of Wayfair’s business. (ECF Nos. 11,  
20 22). More specifically, defendants argue that public records clearly show that Wayfair is a  
21 retailer rather than, as Furniture Royal alleges, an advertisement service. *Id.* However, in its  
22 response, Furniture Royal has summarized various public records and explained how it came to  
23 the conclusion that Wayfair is not a retailer. (ECF No. 21). After reviewing the corresponding  
24 exhibits, the court concludes that Furniture Royal’s interpretation of Wayfair’s public records is  
25 not so egregious as to warrant the “extraordinary remedy” of Rule 11 sanctions. *In re Keegan*  
26 *Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 437 (9th Cir. 1996).

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